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**FILED**

JUL 19 2007

Name RANDONICH

DONALD

(Last)

(First)

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E.

Prisoner Number P-23442

Institutional Address P.O. Box 4000 CSP-Solano - Vacaville, CA 95696-000

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**C 07**

**3730**

DONALD EUGENE RANDONICH,

Full Name of Petitioner

Case No. (To be provided by the  
clerk of court)

**RMW**

vs.

D.K. SISTO,

PETITION FOR A WRIT OF HABEAS CORPUS

Name of Respondent  
(Warden or jailor)

**(PR)**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

<u>Superior Court</u>	<u>Marin County</u>
Court	Location

(b) Case number, if known SC100954A

(c) Date and terms of sentence Sixteen years & four months

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No   

Where? <u>CSP-Solano</u>	<u>P.O. Box 4000 - Vacaville, CA 95696-4000</u>
(Name of Institution)	(Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Possession of Substance with Intent to Manufacture Control Substance - H&S Code §11383;

Possession of Stolen Property - P.C. § 496(a)

3. Did you have any of the following?

Arraignment: Yes X No    Preliminary Hearing: Yes X No    Motion to Suppress: Yes    No X

4. How did you plead?

Guilty \_\_\_\_\_ Not Guilty X \_\_\_\_\_ Nolo Contendere \_\_\_\_\_

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury X \_\_\_\_\_ Judge alone \_\_\_\_\_ Judge alone on a transcript \_\_\_\_\_

6. Did you testify at your trial? Yes \_\_\_ No X

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes X No \_\_\_  
 (b) Preliminary hearing Yes X No \_\_\_  
 (c) Time of plea Yes X No \_\_\_  
 (d) Trial Yes X No \_\_\_  
 (e) Sentencing Yes X No \_\_\_  
 (f) Appeal Yes X No \_\_\_  
 (g) Other post-conviction proceeding Yes \_\_\_ No X

8. Did you appeal your conviction? Yes X No \_\_\_

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes <u>X</u>	No ___	<u>1999</u>	Judgment Affirmed
			(Year)	(Result)
Supreme Court of California	Yes <u>X</u>	No ___	<u>2002</u>	Hearing Denied
			(Year)	(Result)
Any other court	Yes <u>X</u>	No ___	<u>2005</u>	Writ Denied
			(Year)	(Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes \_\_\_ No X

(c) Was there an opinion? Yes \_\_\_ No X

(d) Did you seek permission to file a late appeal under Rule 31(a)?  
 Yes \_\_\_ No \_\_\_ N/A

If you did, give the name of the court and the result:

---

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes X No

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

- I. Name of Court Superior Court, County of Marin
- Type of Proceeding Habeas Corpus
- Grounds raised (Be brief but specific):
- a. Same grounds that will be raised in this petition
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- Result Habeas Corpus Denied Date of Result April 19, 2007
- II. Name of Court Court of Appeal - First Appellate District
- Type of Proceeding Habeas Corpus
- Grounds raised (Be brief but specific):
- a. Same grounds that will be raised in this petition
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- Result Habeas Corpus Denied Date of Result May 10, 2007
- III. Name of Court California State Supreme Court

Type of Proceeding Petition for Review

Grounds raised (Be brief but specific):

a. Same grounds that will be raised in this petition

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result Review Denied

Date of Result June 27, 2007

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes ☐ No ☒

\_\_\_\_\_  
(Name and location of court)

#### B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: IMPOSING AN UPPER-TERM SENTENCE VIOLATED APPELLANT'S SIXTH AND FOURTEENTH

## AMENDMENT RIGHTS TO A JURY TRIAL AND DUE PROCESS

Supporting Facts: At the outset Petitioner will demonstrate within his argument that the decision of the state court is an unreasonable application of clearly established Federal law based upon the watershed/bedrock exception to Teague v. Lane, 489 U.S. 2188 (1989) is not applicable to Cunningham v. California claims made by habeas corpus petitioners whose convictions became final after Apprendi v. New Jersey (2000) was decided, because Apprendi, supra "dictates" the

Claim Two: (CONTINUE)

N/A

Supporting Facts: N/A

Claim Three: N/A

Supporting Facts: N/A

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

N/A



rule that was announced in Cunningham, supra. (See, e.g. People v. Rosen, \_\_\_ Cal. App. 4th \_\_\_, 2007 WL 900765 (3/27/07), §VII [Apprendi dictated the result in Cunningham; see also Reed v. Schriro, \_\_\_ F. Supp. 2d \_\_\_, 2007 WL 521016 (D. Ariz. 2/14/07) [key "finality" date for successfully making Cunningham claims is date that Apprendi came down. Petitioner's case became final after Apprendi (2002) and before Blakley (2004). Petitioner certainly apply for Cunningham relief and the state court decision was an unreasonably application of clearly established federal law.

Appellant was convicted of one count of Possession of Substance with Intent to manufacture control substance in violation of Health and Safety Code section 11383, and one count of Possession of Stolen Property in violation of 496(a). The trial court imposed the upper term of twelve years without a finding by a jury of the crime being aggravated. In imposing the upper term the court stated in pertinent part;

So on count 1, it's the judgment of the Court, pursuant to the provisions of 11383 of the Health & Safety Code, and 1170.2 and subsections of the Penal Code, you are sentenced to the custody of the California Department of Corrections. And in view of your history, all factors considered and all arguments considered, I find that the upper term is the appropriate term, and it's ordered that you are to serve 12 years in the custody of the State of California Department of Corrections".

"And as to Count 2, the Court finds also that the appropriate term is the upper term; however, under the provision of 1170.1, combined with 496 and 1170.2, the one-third of the mid-term is the applicable period consecutive to the period in Count 1, that's one year four months imposed and 56 months stayed". See Exhibit "A" hereto attached.

**B. The Sentence Imposed Violates the Federal Constitution  
Because the Court Relied on Factors Not Found True  
Beyond a Reasonable Doubt By a Jury.**

As the United States Supreme Court held in Apprendi v. New Jersey (2000) 530 U.S. 466, 490, "Any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." In Blackely v. Washington (2004) 542 U.S. 296, the Supreme Court held that the trial court's use of an aggravating factor not found to be true by the jury to increase the defendant's sentence above the statutory maximum, other than the fact of a prior conviction, violated the rule explained in Apprendi.

In January 2007, the Supreme Court held that California's determinate sentencing law violates a defendant's federal constitutional right to a jury trial and proof beyond a reasonable doubt by allowing the judge to impose an aggravated sentence based on facts found by the judge by a preponderance of the evidence.

(Cunningham v. California (No. 05-6551, Jan. 22, 2007) 2007 U.S. LEXIS 1324 at p. \*11.) As the Cunningham court stated, "Because circumstances in aggravation are found by the judge, not the jury, and need only be established by a preponderance of the evidence, not beyond a reasonable doubt ... the DSL violates Apprendi's bright-line rule; Except for a prior conviction, 'any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.' [Citation.]" (Id. at pp. \*35-36.)

In the present case, none of the factors used by the trial court pass muster under Cunningham. The "mere fact of prior conviction" is not an aggravating factor under rule 4.421, and the court's use of appellant's history here were based on qualitative, subjective conclusions which are the type of judgment-calls that Cunningham, Blakely, and Apprendi reserve for the jury.

In addition, the court cited a number of factors in support of imposing the upper term. The mere fact of Appellant's criminal history, joint suspended sentence and association with the law would have been insufficient under rule 4.421, and it is otherwise impossible to determine on the record before this court which factors weighed the heaviest in the court's determination that the upper term was appropriate for appellant.

Thus, because the sentencing factors used in Appellant's case do not pass constitutional muster under the principles followed in Cunningham, the court erred in imposing the upper term.

#### C. The Objection Is Not Forfeited.

Trial counsel did not specifically object to the imposition of the upper term as a violation of Appellant's right to a jury trial or his right to a finding beyond a reasonable doubt.

Appellant was sentenced on December 18, 1998 (Exhibit "A"). People v. Black (2005) 35 Cal. 4th 1238 was decided on June 20, 2005. Thus, at the time of

Appellant's sentencing, **Black**, which upheld California's determinate sentencing law against a **Blakely** challenge, was controlling authority in California and all lower courts were bound by the holding in **Black**. (Auto Equity Sales, Inc. (1962) 57 Cal. 2d 450.) Even if trial counsel had raised a challenge to the sentencing based upon **Blakely**, the challenge would have been denied pursuant to **Black**, so an objection would have been futile. Therefore, the issue is preserved (People v. Esquibel (2006) 143 Cal. App. 4th 645, 660 ["... we find there is no waiver or forfeiture of **Blakely** error in this case because a criminal defendant cannot have forfeited or waived a legal argument that was not recognized at the time of his trial"].)

For the same reason, an objection in the trial court would not have achieved the purpose of prompt detection and correction of error in the trial court. (People v. Scott (1994) 9 Cal. 4th 331, 351; People v. Butler, *supra*, 122 Cal. App. 4th app. 917-918 ["Since the purpose of the forfeiture doctrine is to 'encourage a defendant to bring any error to the trial court's attention so the court may correct or avoid the errors,' [citation], we find it particularly inappropriate to invoke that doctrine here in light of the fact that **Blakely** was decided after [Appellant] was sentenced."])

Furthermore, Appellant did not personally waive his right to a jury trial on the issue of aggravating factors. **Cunningham** established that a defendant has a federal constitutional right to a jury trial as to all factors, other than the fact of a prior conviction, that are used to impose the upper term. His waiver of that right must be knowing and voluntary and must appear on the record; it will not be presumed. (Boykin v. Alabama (1969) 395 U.S. 238, 243; see also, California Constitution, article I, section 16; People v. Ernst (1994) 8 Cal. 4th 441, 445.)

Therefore, the failure to object in the Superior Court does not forfeit appellate review of this issue.

**D. Denial of the Right to a Jury Trial  
is Not Harmless Beyond Reasonable Doubt**

Following Neder v. United States (1999) 527 U.S. 1, the California Supreme Court addressed whether and to what extent Apprendi error should be subject to harmless error analysis. (People v. Sengpadychith (2001) 26 Cal. 4th 316.) In Sengpadychith, the trial court submitted a charge gang enhancement to the jury, but did not instruct the jury on one element of the enhancement. (Id. at p. 322.) The California Supreme Court concluded that this Apprendi error was subject to harmless error review under the federal standard set out in Chapman v. California (1967) 386 U.S. 18: the error was reversible "unless it can be shown 'beyond a reasonable doubt' that the error did not contribute to the jury's verdict ." (Sengpadychith, 26 Cal. 4th at p. 326; see also People v. Smith (2003) 110 Cal. App. 4th 1072, 1079, fn. 9 [following Sengpadychith].)

The United States Supreme Court recently came to the same conclusion about Blakely error in Washington v. Recuenco (2006) \_\_\_ U.S. \_\_\_ [126 S. Ct. 2546, 165 L. Ed. 2d 466]. In Recuenco, the defendant was charged with assault with a deadly weapon, "to wit: a handgun." (Id. at p. 472.) Defense counsel requested a special verdict form that directed the jury to make a finding as to whether the defendant used a "deadly weapon." (Ibid.) The jury found the defendant guilty of a second degree assault and found that the assault was committed with a deadly weapon. The court sentenced the defendant as if the jury made a true finding that he had been armed with a firearm. (Ibid.) The United States Supreme Court rejected the argument that this was structural error, reversible without a showing of prejudice and held that this error was subject to Chapman's harmless error standard. (Id. at p. 477.)

There was never any dispute that the defendant used a firearm; the charging document alleged that the deadly weapon was a firearm. (Id. at p. 472.) Thus, the jury's finding that he used a deadly weapon implied the use of a firearm because there is no other conclusion that can be reached. The evidence that a firearm was

used was presented to the jury, and based on the record on appeal, a reviewing court would not need to speculate as to the whether the jury would not have found the deadly weapon to be a firearm, thus it is reasonable that the Court would find the error harmless. *Recuenco* means that the trial court's reliance on an aggravating factor is harmless only if the defendant admitted the factor or did not dispute the evidence supporting the factor. *Neder* does not permit a reviewing court to guess at how a jury would have resolved a dispute. As *Neder* put it, "[a] reviewing court making this harmless-error inquiry does not, as Justice Traynor put it, 'become in effect a second jury to determine whether the defendant is guilty.'" (*Neder v. United States*, *supra*, 527 U.S. at p. 19.) Such speculation would be necessary where there can be any dispute about the factors in aggravation, and thus *Recuenco*, while establishing *Chapman* as the standard of review for prejudice, is limited in its practical application.

In Appellant's case before the Court, the prosecution cannot establish that the error is harmless beyond a reasonable doubt. It is pure speculation that the jury would have found a sufficient number of the aggravating factors to be true. The jury made no finding with respect to the increasing seriousness of Appellant's past history and associating with the law, his probation status, or whether there were multiple victims in this case. See Abstract of Judgment hereto attached as Exhibit "B". Furthermore, the aggravating factors used by the judge were, for the most part, subjective conclusions, not the undisputed facts considered in *Recuenco*. The jury easily could have disagreed with the court's belief that Appellant's criminal history were increasingly serious or that there were multiple victims.

#### E. Appellant's Sentence Must Be Reduced to the Mid-Term.

*Cunningham* reversed the California court's imposition of the upper term, and remanded the case for further proceedings. (*Cunningham*, *supra*, at p. \*46) It did not, however, articulate just what those further proceedings should be, leaving

that to California to resolve. (Id. at p. \*45.)

In this case, the only permissible remedy is to strike the upper term and impose the mid-term because current California law does not permit submission of aggravating sentencing factors to a jury. For example, a jury is generally authorized to render only a general verdict. (See Penal Code section 1150 ["The jury must render a general verdict, except that in a felony case, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict."].) *Blakely* means there must be a special verdict or a non-capital penalty phase of trial. But in California the scope of jury trials and permissible verdicts are matters governed by the California Constitution, statute, and rules of court. Nowhere do these authorize juries to determine factors in aggravation.

Under *Cunningham*, the factors set forth in Penal Code section 1170 and the implementing rules of court violate the *Apprendi* mandate. The term of imprisonment that may be imposed based solely on the jury's verdict is the middle term. The judge may not impose the upper term unless he/she finds that there are additional aggravating factors, which are reserved solely to the trial judge based upon a preponderance of the evidence standard and can be gleaned from material that the jury never considered (e.g., probation reports). Indeed, by virtue of rule 4.420, subd. (d) the judge is specifically prohibited from imposing the upper term based on an element of the underlying offense -- the very facts that the jury unanimously found to be true beyond a reasonable doubt. However, there is no provision in California law for submitting them to a jury. The "circumstances in aggravation: contained in rule 4.421 are a judicial creation. The legislature has not enacted them and the prosecution did not charge them here. Any "facts that expose a defendant to a punishment greater than that otherwise legally prescribed" are functional equivalent of an element of a greater offense than the covered by the



jury's guilty verdict." (Apprendi v. New Jersey, *supra*, 530 U.S. at pp. 484, fn. 10 494 fn. 19; see also People v. Betts (2005) 34 Cal. 4th 1039, 1054 ["A fact that increases the maximum permissible punishment for a crime is the functional equivalent of an element of the crime, regardless whether that fact is defined by state law as an element of the crime or as a sentencing factor."].) After Apprendi, Blakely, and Cunningham, "Circumstances in aggravation: are necessarily deemed elements of the crime rather than mere "rules for court administration, practice, and procedure." (People v. Wright (1982) 30 Cal. 3d 705, 711, citing California Constitution, article VI, section 6.)

Appellant contends that the judiciary cannot manufacture elements on which a jury may be instructed. (Keeler v. Superior Court (1970) 2 Cal. 3d 619, 631 [subject to constitutional limits, "the power to define crimes and fix penalties is vested exclusively in the legislative branch"].) Accordingly, a judicial rule or doctrine "does not itself define a crime, as that is a legislative function." (People v. Cervantes (2001) 26 Cal. 4th 860, 867, fn 10.) Absent "legislative proscription of conduct, there is no crime." (People v. Dillon (1983) 34 Cal. 3d 441, 461.) Nor may courts expand the definition of a crime by interpretation: "it is clear the courts cannot go so far as to create an offense by enlarging a statute, by inserting or deleting words, or by giving the terms used false or unusual meanings." (People v. Keeler (1970) 2 Cal. 3d 619, 632.)

Therefore, until or unless the legislature enacts the rule 4.421 factors as elements of crimes or as the basis for sentencing enhancements, trial courts have no authority to instruct juries on those elements or to engage in harmless-error analysis as to what a jury might have done if so instructed. (Cf State v. Pillatos (Wash, Jan. 25, 2007) 2007 WL 178188,\*3 ["This court will not create a procedure to empanel juries on remand to find aggravating factors because the legislature did not provide such a procedure.... To create such a procedure out of whole cloth

would be to usurp the power of the legislature," and thus "trial courts do not have inherent authority to empanel sentencing juries"]; State v. Kessler (2003) 276 Kan. 215-217 [73 P. 3d 761, 771-772] [trial court erred in instructing jury and imposing upward departure when the statutory "procedure in place at the time was unconstitutional" and legislature had not yet enacted new procedure].) Furthermore, any attempt to apply such new legislation to Appellant would be barred by the constitutional prohibition against ex post facto punishment.

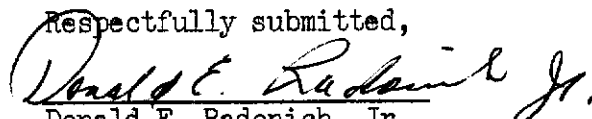
Accordingly, this Federal Court should strike the unconstitutionally imposed upper term and impose the mid-term for both counts and remand this case to the lower court for proceedings free from constitutional error.

**WHEREFORE,** for all of the forgoing reasons Petitioner has been denied his Federal Constitutional rights and has demonstrated that the state court decision was contrary to, or involved an unreasonable application of, clearly established Federal law.

I swear under the penalty of perjury that all of the information in this petition for habeas corpus is true, correct and complete and to those matters stated on information and belief, I believe them to be true.

DATED: July 16, 2007

Respectfully submitted,

  
Donald E. Radonich, Jr.  
Petitioner In Pro Se/



\_\_\_\_\_  
List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(SEE CASES CITED WITHIN ARGUMENT)  
\_\_\_\_\_

Do you have an attorney for this petition? Yes \_\_\_ No X

If you do, give the name and address of your attorney:

Petitioner request the appointment of counsel  
\_\_\_\_\_

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on July 16, 2007  
Date

Donald E. Radamick Jr.  
Signature of Petitioner

E X H I B I T " A "

1 believe that's what was going on, and I think the jury  
2 was thoroughly correct in coming to that conclusion.

3 And you did it at the time when you had your  
4 son and when you had your daughter on the way, and if  
5 that's not enough to stimulate you to conform your  
6 conduct to some reasonable standard of safety and  
7 propriety for the rest of the public, what you have in  
8 the world right now is no more likely to do so.

9 So I think pursuant to the standards that are  
10 clearly articulated in the Romero and in the Williamson  
11 case, I do not have good cause to strike the prior and  
12 would be in violation of my authority to do so.

13 Given that circumstance, the rest of it has a  
14 certain amount of definiteness and compulsion to it.  
15 The law provides that you can't be put on probation. I  
16 don't think it would be a good idea anyway, but I can't  
17 put you on probation. In view of all of the  
18 circumstances, the law says that without some very  
19 substantial good reason, which I don't find, I have to  
20 send you to prison.

21 So on Count 1, it's the judgment of the Court,  
22 pursuant to the provisions of 11383 of the Health &  
23 Safety Code, and 1170.12 and subsections of the Penal  
24 Code, you are sentenced to the custody of the California  
25 Department of Corrections. And in view of your history,  
26 all factors considered and all arguments considered, I  
27 find that the upper term is the appropriate term, and  
28 it's ordered that you are to serve 12 years in the

1 custody of the State of California Department of  
2 Corrections.

3 And as to Count 2, the Court finds also that  
4 the appropriate term is the upper term; however, under  
5 the provisions of 1170.1, combined with 496 and 1170.12,  
6 the one-third of the mid-term is the applicable period  
7 consecutive to the period in Count 1, that's one year  
8 four months imposed and 56 months stayed.

9 And then on the 11370.2(b) allegation,  
10 pertinent to the offense of Count 1, there's a  
11 three-year aggravation provided under the law that's  
12 consecutive to the aggregate sentence is 16 years four  
13 months in state prison.

14 Following any period in state prison, you will  
15 be placed on parole. The parole period, I believe,  
16 would be three-years. However, it might be extended  
17 because of revocations.

18 You could do four additional years in state  
19 prison on revocations. That would be four separate  
20 revocations, consequence one year additional time each  
21 as a possibility.

22 There is a requirement that you register as a  
23 narcotics offender pursuant to 11590 of the Health &  
24 Safety Code.

25 And I'll order that you pay a restitution fine  
26 in the amount of \$3,200 pursuant to Penal Code Section  
27 1202.4.

28 And also you need to be aware that if you want

2:45 O'CLOCK P.M.

AFTERNOON SESSION

---oOo---

THE COURT: The record will reflect that we've got all the jurors back. Both counsel and defendant are here. The alternates are not present.

And, Juror No. 45, because I got a note from you, and because you're carrying something that looks like the verdict forms and the instruction book, I'm going to infer that you not only have been elected foreperson but you have not been deposed. Is that correct?

JUROR NO 45: No.

THE COURT: And the other thing is, the bailiff has informed me that you have reached verdicts. Is that correct?

JUROR NO 45: That is correct, your Honor.

THE COURT: And have you signed and dated the appropriate forms and left the others blank?

JUROR NO 45: I have, your Honor.

THE COURT: Would you please give all the forms to the bailiff so I can inspect them.

I'll ask the Clerk to please read the verdicts.

THE CLERK: Marin County Courts, Superior Court of California. The People of the State of California versus Defendant, Donald Eugene Radonich, Case No. SC100954A.

We the jury in the above-entitled case, find

1 the defendant guilty of a Felony Violation of California  
2 Health & Safety Code Section 11383(c)(1), possession of  
3 Ephedrine with intent to manufacture methamphetamine.

4 We the jury in the above-entitled case, find  
5 the defendant guilty of a Felony Violation of California  
6 Penal Code section 496(a), possessing or receiving  
7 stolen property.

8 Foreperson (Juror No. 45), date 8/20/98.

9 THE COURT: Are those your verdicts, Juror  
10 No. 45?

11 JUROR NO 45: Yes, they are, your Honor.

12 THE COURT: Do you wish to have the jury  
13 polled?

14 MS. MARMOR: Yes. Thank you.

15 THE COURT: Will it be satisfactory to poll  
16 the jury on both counts at the same time?

17 MS. MARMOR: Yes.

18 THE COURT: As in, "Are those your verdicts?"

19 MS. MARMOR: Yes. /

20 THE COURT: The Clerk will poll the jury.

21 THE CLERK: (Juror No. 76), are these your  
22 verdicts?

23 JUROR NO. 76: Yes, they are.

24 THE CLERK: (Juror No. 45), are these your  
25 verdicts?

26 JUROR NO 45: Yes, they are.

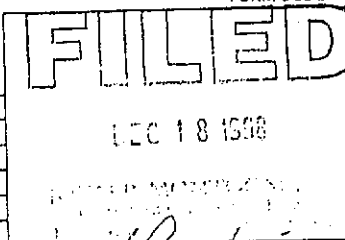
27 THE CLERK: (Juror No. 35), are these your  
28 verdicts?

E X H I B I T . " B "

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## ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290


 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN  
 BRANCH \_\_\_\_\_
COURT D. 21

CASE NUMBER (S)

SC100954A - A

DEC 18 1998

 PEOPLE OF THE STATE OF CALIFORNIA versus  
 DEFENDANT: DONALD EUGENE RADONICH
☒ PRESENT☐ NOT PRESENT
 COMMITMENT TO STATE PRISON  
 ABSTRACT OF JUDGMENT

 AMENDED  
 ABSTRACT ☐

DATE OF HEARING (MO) (DAY) (YR)

12-18-98

DEPT. NO

D

JUDGE

John Stephen Graham

CLERK

B. Lucchesi

REPORTER

Margaret Collins

COUNSEL FOR PEOPLE

Girard Courteau

COUNSEL FOR DEFENDANT

Bonita Marmor

PROBATION NO. OR PROBATION OFFICER

Steve Shapiro

## 1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY/MISDEMEANORS):

## SENTENCE RELATION

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CHARGE COMMITTED	DATE OF CONVICTION			CONVICTED BY			CONCURRENCE	CONSECUTIVE TO PRIOR	CONSECUTIVE TO NON-VOL.	CONSECUTIVE TO NON-VOL. FROM	CONSECUTIVE TO SENTENCES OR OTHER A.	64 DAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
					MO	DAY	YEAR	JURY TRIAL	COUNT TRIAL	PLEA							YEARS	MONTHS
1	HS	11383	Poss of Substan	98	8	20	98	X			U						1	2
			with Intent to															
			manufacture cont															
			substance															
2	PC	496(a)	possession of stolen	98	8	20	98	X			U						1	4
			property															

 2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.  
 List all enhancements based on prior convictions or prior prison terms charged and found true, if 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1202. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Count	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total
1	HS												
	11370.2(b)3												

## 3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER.

List all enhancements based on prior convictions or prior prison terms charged and found true, if 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1202. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total

## 4. INCOMPLETED SENTENCE(S) CONSECUTIVE.

COUNTY	CASE NUMBER	CREDIT FOR TIME SERVED

## 5. OTHER ORDERS

 Register pursuant to 11590  
 Pay restitution pursuant to  
 1202.4 in the amount of \$3,200.00

Use additional sheets of plain paper if necessary.

## 6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A):

7. TIME STAYED TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE-BASED-TERM LIMIT, ETC. (Do not include § 654 stays or discretionary stays of term for enhancements.)

16 4

## 8. TOTAL TERM IMPOSED:

## 9. EXECUTION OF SENTENCE IMPOSED:

A. ☒ AT INITIAL SENTENCING HEARINGB. ☐ AT RESENTENCING PURSUANT TO DECISION ON APPEALC. ☐ AFTER REVOCATION OF PROBATIOND. ☐ AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC § 1170(d))E. ☐ OTHER

10. DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR)

12-18-98

CREDIT FOR TIME SPENT IN CUSTODY

455

INCLUDING:

ACTUAL LOCAL TIME

305

LOCAL CONDUCT CREDITS

150

STATE INSTITUTIONS

☐ DMH☐ CDC

## 11. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

☒ WITHIN 24 HOURS
☐ AFTER 48 HOURS,  
 EXCLUDING SATURDAYS,  
 SUNDAYS AND HOLIDAYS

 INTO THE CUSTODY OF  
 THE DIRECTOR OF  
 CORRECTIONS AT THE  
 RECEPTION-GUIDANCE  
 CENTER LOCATED AT:
☐ CALIF. INSTITUTION FOR WOMEN - FRONTIERA☐ CALIF. MEDICAL FACILITY - VACAVILLE☐ CALIF. INSTITUTION FOR MEN - CHINO☐ DEVEL VOC. INST.☒ SAN QUENTIN☐ OTHER (SPECIFY):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

CLERK'S SIGNATURE

Beverly Lucchesi

DATE

12-23-98

This form is prescribed under Penal Code § 1213.5 to satisfy the requirements of § 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

 ABSTRACT OF JUDGMENT - PRISON COMMITMENT  
 FORM DSL 290

Pen.C. 1213.5

 Form Adopted by the  
 Judicial Council of California  
 Effective April 1, 1990

DISTRIBUTION:

PINK COPY - COURT FILE

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WHITE COPY - ADMINISTRATIVE OFFICE OF THE COURTS



J2411H1  
MARIN CJIS  
ORGANIZATION: SC

SUPERIOR COURT CRIMINAL  
IN AND FOR THE COUNTY OF MARIN

12/21/98  
14:40

CASE NO. SC100954 A DATE: 12/18/98 TIME: 09:00 AM DEPT.: D

PEOPLE VS. RADONICH, DONALD EUGENE JR  
BOOKED AS:

JUDGE: JOHN S GRAHAM, JUDGE  
REPORTER: MARGARET COLLINS

CLERK: MS LUCCHESI  
BAILIFF:

NATURE OF PROCEEDINGS: REPORT AND JUDGMENT

CHARGES: 1. HS 11383(C)(1) W/PC 1203(E)(4):F4 W/HS 11370(A)(C) W/PC 1170.12  
(A) W/HS 11370.2(B)  
2. PC 496(A) W/PC 1170.12(A)

DEPUTY DISTRICT ATTORNEY AL DAIR AND GIRARD COURTEAU  
APPEARED.

DEFENDANT APPEARED WITH DEPUTY PUBLIC DEFENDER MARMOR.

DEPUTY PROBATION OFFICER STEVEN SHAPIRO APPEARED.

DEFENDANT IN CUSTODY ON THIS CASE.

PROBATION REPORT READ, CONSIDERED, AND FILED.

MOTION FOR NEW TRIAL ARGUED AND SUBMITTED.

MOTION OF NEW TRIAL FOR/TO DEFENDANT IS DENIED.

MOTION TO STRIKE PRIOR ARGUED AND SUBMITTED.

MOTION OF STRIKE PRIOR FOR/TO DEFENDANT IS DENIED.

DEFENDANT WAIVES TIME FOR SENTENCING.

DEFENDANT STATES THERE IS NO LEGAL CAUSE WHY JUDGMENT  
SHOULD NOT BE PRONOUNCED.

DEFENDANT, DEFENDANT'S COUNSEL, MS. NORMAN, MRS.  
RADONICH, DEFENDANT'S MOTHER ALL ADDRESS THE COURT.

DEPUTY DISTRICT ATTORNEY ADDRESS THE COURT.

FILED

DEC 18 1998

JOHN P. MONTGOMERY  
Court Executive Officer  
MARIN COUNTY COURTS  
By: *[Signature]* Deputy

CASE NO. SC100954 A DATE: 12/18/98 TIME: 09:00 AM DEPT.: D  
PEOPLE VS. RADONICH, DONALD EUGENE JR

THE COURT MAKES THE FOLLOWING FINDINGS AND/OR ORDERS:

PROBATION IS DENIED.

AS TO COUNT 1, CIRCUMSTANCES WARRANT AGGRAVATED TERM.

DEFENDANT COMMITTED TO STATE PRISON FOR 12 YEARS.

AS TO COUNT 2, CIRCUMSTANCES WARRANT AGGRAVATED TERM.

DEFENDANT COMMITTED TO STATE PRISON FOR 6 YEARS.

AS TO COUNT 2, PURSUANT TO PC 1170.1, 56 MONTH(S)  
STAYED, 16 MONTH(S) IMPOSED.

THE TOTAL AGGREGATE SENTENCE IMPOSED IS 16 YEAR(S), 4  
MONTH(S), 0 DAYS IN THE STATE PRISON.

PLUS ENHANCEMENT FOR ALLEGATION NUMBER 5 AS TO COUNT 1  
PURSUANT TO HS 11370.2(B) OF 3 YEAR(S), IMPOSED.

DEFENDANT TO RECEIVE CREDIT FOR TIME SERVED: 305 PLUS  
150 GOOD/WORK, FOR A TOTAL OF 455 DAYS.

DEFENDANT IS ADVISED OF PAROLE.

DEFENDANT IS ADVISED OF PAROLE CONSEQUENCES.

DEFENDANT IS ADVISED OF APPEAL RIGHTS.

DEFENDANT TO REGISTER AS REQUIRED PURSUANT TO HS 11590  
AS A NARCOTICS OFFENDER.

DEFENDANT TO PAY RESTITUTION FINE IN THE AMOUNT OF  
\$3,200.00 PURSUANT TO PC1202.4.

ALL SENTENCE ELEMENTS FOR THIS PROCEEDING ENTERED.

ENTERED ON CJIS BY BL, DATE 12/21/1998.

CASE NO. SC100954 A DATE: 12/18/98  
PEOPLE VS. RADONICH, DONALD EUGENE JR

TIME: 09:00 AM

DEPT.: D



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JOHN S GRAHAM, JUDGE

E X H A U S T I O N   O F   S T A T E   R E M E D I E S

FILED

APR 19 2007

KIM TURNER  
Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: M. Murphy, Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN

IN THE MATTER OF

Donald Eugene Radonich, Jr.

P-23442

Petitioner,

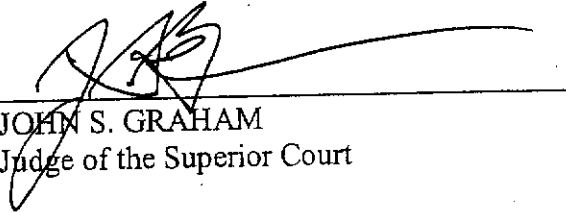
FOR WRIT OF HABEAS CORPUS.

Case No.: SC152354A

ORDER DENYING PETITION  
FOR WRIT OF HABEAS CORPUS

The petition for writ of *habeas corpus* is denied. The Petition does not state facts demonstrating a prima facie basis for relief in *habeas corpus*.

Dated: April 19, 2007

  
JOHN S. GRAHAM  
Judge of the Superior Court

Cc: Petitioner  
Warden  
Attorney General

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re DONALD EUGENE RADONICH,  
JR.,

on Habeas Corpus.

A117597

(Marin County  
Super. Court No. SC152354A)

**FILED**

MAY 10 2007

Court of Appeal - First App. Dist.  
DIANA HERBERT

By DEPUTY

The Court:\*

On May 3, 2007 petitioner Donald Radonich filed an "Appeal from the Judgment of the Superior Court of the State of California or the County of Marin." That document challenges the Marin County Superior Court's April 19, 2007 "Order for Denying Petition for Writ of Habeas Corpus." Because the proper mechanism to seek further judicial review of the issues raised in petitioner's superior court petition is to file a petition for a writ of habeas corpus in this court, we now construe petitioner's "Appeal" as a petition for habeas corpus.

The petition for a writ of habeas corpus is denied.

Dated: \_\_\_\_\_

MAY 10 2007

McGUINNESS, P.J. P.J.

\* McGuinness, P.J., Pollak, J., & Siggins, J.

Court of Appeal, First Appellate District, Div. 3 - No. A117597  
S152936

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re DONALD EUGENE RADONICH on Habeas Corpus

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The petition for review is denied.

Corrigan, J., was recused and did not participate.

SUPREME COURT  
**FILED**

JUN 27 2007

Frederick K. Oniiah Glerk

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DEPUTY

**GEORGE**

---

Chief Justice

Case # (if applicable): \_\_\_\_\_ 7-16, 2007

To: **CLERK OF THE COURT**  
☐ SUPERIOR COURT  
☐ COURT OF APPEAL  
☐ CALIFORNIA SUPREME COURT

☒ FEDERAL DISTRICT COURT  
☐ FEDERAL COURT OF APPEAL  
☐ U.S. SUPREME COURT

From: Donald Radovich  
California State Prison - Solano  
Housing: 15 I 1 Lo  
P.O. Box 4000  
Vacaville, California 95696-4000

CDC #: P-23442

Re: ☒ PETITION FOR WRIT OF HABEAS CORPUS  
☐ PETITION FOR REHEARING/RECONSIDERATION  
☐ PETITION FOR REVIEW  
☐ BRIEF ON APPEAL  
☐ MOTION TO COURT

Case: ☒ IN RE Donald Radovich  
☐ PEOPLE v. \_\_\_\_\_  
☐ OTHER: \_\_\_\_\_

Dear Clerk:

I am presently incarcerated at the California State Prison - Solano, in Vacaville. Due to my incarceration, indigency or minimal funds, and the current policy of the California Department of Corrections as stated in Deputy Director Memorandum 15/04, I cannot provide the required number of copies as required by the Rules of Court.

Therefore, I must respectfully request that the court make the required additional copies and to serve any required copies on other parties as necessary.

Furthermore, please send a conformed copy of the documents back to me as a receipt of filing. I apologize for any inconvenience that this may have caused.

Respectfully submitted,

Don Radovich